

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 389 OF 2020

GIA ECO SOLUTIONS (T) LIMITED.....APPLICANT

VERSUS

ORIO MFUGALE.....RESPONDENT

RULING

1st & 7th December 2021

Rwizile J.

The applicant is applying for extension of time to file an application for revision. It originates from the decision of commission for mediation and arbitration No. CMA/DSM/ILA/R.585/2018 dated 25th May 2020. Mr. Luoga is the advocate for the applicant. He was allowed to argue the application by written submissions. The application is supported by affidavit sworn by Solanki, the Human Resource Officer of the applicant. The application was heard exparte since the respondent failed to appear deliberately. The affidavit of the applicant is attacking the award for having contained illegalities coached in the following terms;

- i. *That the condonation of late referral of the respondent's dispute was without tangible evidence of sickness*
- ii. *That the respondent did not and failed to reckon each day of delay and failed to give grounds for such delay*
- iii. *That CMA reckoned the days of delay in contravention of the law of limitation and*
- iv. *That the learned arbitrator erred in law and fact for failure to evaluate the evidence of the applicant, hence the award was improperly procured.*

Submitting on the points raised, the applicant's counsel was of the view that the commission illegally condoned the application based on the allegation of sickness. This in his view was an illegality which should be taken as a good ground for granting this application. He asked this court to refer to the cases of **Tanzania Breweries limited vs Herman Baldad Minja**, Civil Application No. 11/18 Of 2019, **The Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia**, [1992] TLR 182, and **VIP Engineering and Marketing Limited and three others vs Citibank Tanzania Limited**,

consolidated Civil Reference No. 6,7 and 8 of 2006, CA (Unreported). He therefore asked this court to grant this application.

Before delving into the merits of the submissions, I have to first lay down the principles this court applies to grant or reject an application for extension of time. It is trite that, granting or refusing extension of time is an absolute discretion of the court. For the application to be granted, one must show sufficient cause and account for each day of delay.

This was stated in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal held inter alia that:

"...It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse, extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause..."

In the case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, again the Court of Appeal held that;

"...It is essential to reiterate here that the Court's power for extending time ... is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.

However, in the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, the Court of Appeal laid down three principles to be considered as hereunder;

- i. The delay should not be inordinate;*
- ii. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged*

The same principles have been consistently applied by courts whenever the occasion arises. The principles above have been codified into law in nearly the same manner as in the case laws. To guide arbitrator for instance, before condoning an application, Rule 11(2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN No. 64 of 2007,

provides that before granting an application for condition, consideration is in regard to the following;

- i. the degree of lateness and
- ii. reasons thereof,
- iii. the prospects of succeeding,
- iv. the amount of prejudice attached to the case on the other party.

On illegality, this court fetches supported in the cases of **Lyamuya Construction PS Ministry of Defence**, (supra) and the case of **Finca (T) Ltd and another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, (supra) CA unreported. It was held that illegality is a good ground for extension of time. But in order to plead illegality successfully, I have to add, it must be glaringly apparent on the face of the record. The applicant has just pleaded an issue of illegality. I think, it referred to the commission's considering sickness of the respondent as the ground of condoning the application without tangible evidence, and that it did not consider, if there were good grounds for doing so and that it did not consider the law of limitation. With this, he seemed to suggest that it paved the way to an improper award.

In my view, there is no straight forward showing of illegality. If it is there, then, it is not just in the face of the record. What can be said here, is that the only reason advanced to support this application is not proved.

It needs arguments to prove, in the circumstances of this application, that there is illegality. In my opinion that cannot be done at this stage, because doing so will determine the application that is not before the court. But still, looking at the award the applicant is intending to impeach, I am thrown into confusion. The commission made two decisions, first was an application for condonation, which is slated as No. CMA/DSM/ILA/R.585/2018. It was made on 28th November 2018, where an application for condonation was granted. This paved the way to a decision of 25th May 2020, which is CMA/DSM/ILA/R.585/18/473, the final award. The applicant has asked this court to revise the CMA/DSM/ILA/R.585/2018 dated 25th May 2020. It is not clear as to which of the two decisions, the applicant intends to be revised. All in all, even assuming, it is the final decision of the commission, still the grounds advanced for delay are not sufficient to merit the grant of it. The applicant did not show any reason for delay let aside accounting for all days of delay. The applicant has only pleaded illegality, which as I have shown

before has not been successfully shown. I am bound to hold that this application is devoid of merit. It is dismissed. I make no order as to costs.



A.K.Rwizile

JUDGE

07.12.2021

Labour Court TZ.